IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 1341 OF 2005

Mahesh N. Shah **Petitioner**

Vs.

State of Maharashtra
and Ors. **Respondents**

Mr. C. P. Deogirikar, Advocate, for
Petitioner.

Ms. Mamta Sadh, Advocate for Respondent Nos.
1,4 and 5.

Ms. S. A. Mudbidri, Advocate for Respondent
No.2.

CORAM : ANOOP V. MOHTA, J.

DATE : DECEMBER 11, 2006.

PC :-

. As petitioner was refused a membership by respondent No.2 Society, therefore, the present petition.

2. The cause of action arose some times in the year 2000, as petitioner without obtaining permission of respondent no.2 society and Bombay Municipal Corporation had renovated the newly purchased flat in question. The Society objected for such construction, apart from concerned member of the society.

3. The petitioner had preferred appeal under Section 22(2) of the Maharashtra Cooperative Societies Act 1960 (in short M.C.S. Act), which was allowed by the order dated 9th November 2001 by the Dy. Registrar, Co-operative Societies, "D" Ward, Mumbai, in following words.

> "I Mohmed Arif, the Deputy Registrar, Co-Operative Societies, by virtue of powers in me, under the provisions of Section 22(2) direct the Vellard View Premises C0.operative Society Ltd. Tardeo Road, Mumbai 400034, that Shri Mahesh n. Shah stands admitted to the Membership, in respect of Flat No.37 and the Society should make entry in the Membership Register."

However, the Revision filed by the Society has been allowed, which is under challange.

4. Admittedly, the illegal construction in question was demolished by the Corporation. There is no cause survived so far this part is concerned. In view of the basic order dt. 9th

Nov., 2001, referred above, the petitioner has been enjoying the membership of the society.

5. While admitting the present petition, this court on 4th July 2005 has passed following order.

> "1. Heard learned counsel for the petitioner and respondent no.2.
>
> 2. Rule, returnable within three weeks. Learned counsel for the respondent No.2 waives service. Interim relief in terms of prayer clause (e)."

> **"(e).** Ad-interim reliefs in terms of prayer clauses (b),(c) and (d) above.**"**

6. Considering this, there is no reason now to refuse the membership to the petitioner, who has purchased the property by following the due procedure of law. Being owner of the said property in question, in the present facts of the case, there is no reason to reject his case of membership merely because some renovation

was done after purchasing the flat. The Revisional Court's view need interference and is therefore, in the above background is set aside.

7. The Dy. Registrar, Co-operative Societies, "D" Mumbai while allowing claim of petitioner had given sufficient reason to support the claim of membership of the petitioner, in the facts and circumstances of the case.

8. I am inclined to accept the views and reasoning given by the Dy. Registrar, Co-operative Societies, "D" Ward, Mumbai, dated 9th November, 2001.

9. Taking all into account, present petition is allowed in terms of prayer Clause (a).

10. No orders as to costs.

[ANOOP V. MOHTA, J.]